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No. 02-519

Supreme Court U.S.
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In The

Supreme Court of the United States

DOUGLAS G. SLOAN,

Petitioner,

v.

CARROLL CHRISTY, RAYMOND MORALES, and CITY OF MILLVILLE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to constitutional protection and concomitantly to damages for his alleged wrongful prosecution for the crime of stalking, when his prosecution was based on a course of conduct evidencing unusually obsessive and fanatical behavior which engendered a genuine and reasonable fear in defendant Carrol Christy, based on his transparent allegations that his prosecution implicated his constitutional rights to free speech and travel, and despite such conduct being determined by a reasonable police officer to constitute probable cause for the crimes of stalking and harassment, or alternatively to engender an objectively reasonable belief that probable cause existed for the arrest thus entitling the officer to qualified immunity.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment I provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States, Amendment IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

The original version of N.J.S.A. 2C:12-10 provides in pertinent part:

a. As used in this act:

(1) "Course of conduct" means a knowing and willful course of conduct directed at a specific person, composed of a series of acts over a period of time, however short, evidencing a continuity of purpose which alarms or annoys that person and which serves no legitimate purpose. The course of conduct must be such as to cause a reasonable person to suffer emotional distress. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Credible threat" means an explicit or implicit threat made with the intent and the apparent ability to carry out the threat, so as to cause the person who is the target of the threat to reasonably fear for that person's safety.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposely and repeatedly follows another person and engages in a course of conduct or makes a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily injury.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking which involves an act of violence or a credible threat of violence against the same victim is guilty of a crime of the third degree.

e. This act shall not apply to conduct which occurs during organized group picketing.

As amended effective June 20, 1996, N.J.S.A. 2C:12-10 provides in pertinent part:

> a. As used in this act:
>
> (1) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.
>
> (2) "Repeatedly" means on two or more occasions.
>
> (3) "Immediate family" means a spouse, parent, child, sibling or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.
>
> a. A person is guilty of stalking, a crime of the fourth degree, if he:
>
> (1) Purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family; and
>
> (2) Knowingly, recklessly or negligently places the specific person in reasonable fear of bodily injury to himself or a member of his immediate family or in reasonable fear of the death of himself or a member of his immediate family.

STATEMENT OF THE CASE

Petitioner seeks plenary review of a decision of the United States Court of Appeals for the Third Circuit

affirming the District Court's decision granting summary judgment to the defendants on all counts on the grounds that defendant, Officer Raymond Morales, was prudent and reasonable in determining that Douglas Sloan engaged in a course of conduct directed at Carroll Christy that would have caused a reasonable person in her position to fear bodily injury to herself or a member of her immediate family, or alternatively that defendant Morales is entitled to qualified immunity from suit. The Court further held that no evidence was presented supporting the theory that a city policy or custom was the moving force behind the constitutional deprivations allegedly suffered by the plaintiff. Both lower courts dismissed plaintiff's claims in their entirety upon defendant's motion for summary judgment.

1. Factual Background

The course of conduct admittedly engaged in by plaintiff evidences the probable cause justifying his arrest by Officer Morales. In large measure, a number of the facts and circumstances relevant to Morales' decision were communicated directly to Morales by the plaintiff himself. Namely, on June 29, 1996, Mr. Sloan appeared at the Millville Police Station and asked to speak to a police officer. App. 24a. Officer Morales' report, prepared soon after his interaction with Mr. Sloan, indicates that "Mr. Sloan said that he wanted me to know that he was very upset with Carroll Christy because she does not want to speak to him. Mr. Sloan said that he had a dating relationship with Carroll Christy and does not know if it's over because Carroll never told him."

Also, Officer Morales was provided with a typewritten statement from Mr. Sloan. This statement, which the District Court described as "bizarre," conveyed the following information to Officer Morales: App. 24a.

- That Douglas Sloan had been involved in a sexual relationship with Carroll Christy from August of 1995 until March of 1996;
- The relationship was terminated by Carroll Christy on March 17, 1996, and that the termination of the relationship was a great shock to Mr. Sloan;
- That following the termination of the relationship, Mr. Sloan returned to Canada (his home country);
- That, in the week following the termination of the relationship, Mr. Sloan called Ms. Christy's residence repeatedly, filling up her answering machine tape over the course of repeated messages;
- Despite Ms. Christy's termination of the relationship, and her refusal to respond to Mr. Sloan's phone calls, that he made reservations to fly down to visit her over the Easter weekend.
- While calling her office to inform her that he was flying down, that Ms. Christy informed him, "Doug, this time you've gone too far. You've harassed me all weekend and I've spoken to the Millville Police about you. If you come, I won't be there and I will call the police."
- Following this phone call, that Mr. Sloan wrote Ms. Christy eleven (11) letters, the

majority of which were returned marked "Refused."

- That Sloan believed Ms. Christy's behavior to be "bizarre" and that subtly she may be either enjoying or trying to encourage Sloan's pursuit: "Openly, she seems utterly hostile, but beneath the surface there is a subtlety (changing the setting on her phone machine, not writing refused on that one returned letter, inviting me into the bath) that suggests she is thinking through every step very carefully."

Thus, Mr. Sloan's statement in and of itself conveyed to Officer Morales sufficient facts to indicate that Carroll Christy wanted nothing further to do with her former lover, that she felt she was being harassed and that Mr. Sloan was pursuing Ms. Christy through phone calls, letters and finally by coming to Millville from Canada in an effort to recapture her heart.

The statement also contains a narrative which, while probably not explicitly criminal, was as Officer Morales described it, "weird." Namely, the three (3) page statement provided by Sloan to Officer Morales contains details of the intimacies engaged in between Mr. Sloan and Carroll Christy during their relationship. Specifically, this statement refers to the couple kissing passionately; becoming frustrated in an attempt to make love because of outdated condoms; dancing together to the music of Frank Sinatra; showering together; making such passionate love on the floor of Carroll Christy's attic that she was left with an abrasion on her back; and engaging in protracted lovemaking in Carroll Christy's bathtub.

Beyond this statement, Mr. Sloan himself made a verbal statement or statements to Morales which caused

Officer Morales to be wary. Specifically, and in Mr. Sloan's own words, he asked what the ramifications would be if Mr. Sloan "camped on her [Carroll Christy's] front lawn." App. 24a. By Officer Morales' own account, this inquiry about camping on Carroll Christy's front yard "startled" him. App. 34a, 35a. Additionally, while Sloan was at the police station, Morales received a phone call from Carroll Christy's former sister-in-law, Jane Christy, indicating that Sloan was "harassing" Mrs. Christy and her husband. App. 24a.

It is not disputed that, following Sloan's departure from the station, Officer Morales was contacted by Ms. Christy's son, Blake Christy, because of his concern for his mother. App. 24a. Because of this concern Officer Morales directed himself to the Christy residence to conduct a search for Mr. Sloan. Not finding Sloan, Morales awaited Ms. Christy's arrival. App. 25a.

It is also not disputed that upon her arrival, Ms. Christy informed Officer Morales that Sloan had been calling her house constantly and that she had had to change her phone number. App. 19a, 20a, 21a. Ms. Christy additionally informed Officer Morales that Sloan had been harassing her employees and sending her letters and that Ms. Christy had received a letter from Sloan's attorney advising that Sloan wished to meet with her. App. 22a.

Officer Morales also testified that Carroll Christy appeared upset in the early morning of June 30, 1996. App. 25a. "Basically Carroll said she had enough of Mr. Sloan, she was upset and basically she didn't know what to do and that was it." In Ms. Christy's own words: "I was threatened to the point where I felt you were becoming

irrational and I didn't know what you would do. I was very, very frightened."

It is also not disputed that Morales assisted Ms. Christy in applying for a Domestic Violence Restraining Order, which was granted and eventually made permanent, and that when Mr. Sloan was eventually found for the purpose of serving the restraining order on July 3, 1996, he was located in a state park approximately twenty (20) miles from Ms. Christy's place of employment. App. 25a.

The above facts were unequivocally within the defendant Morales' knowledge, either related directly to him by Mr. Sloan or by Ms. Christy and her family over the course of events from June 29, 1996, to July 3, 1996. Thus, probable cause certainly existed for Morales' arrest of Sloan, and this petition for certiorari should therefore be denied.

REASONS FOR DENYING THE WRIT

I. PETITIONER FAILS TO ADVANCE A VALID OR COHERENT REASON JUSTIFYING THE GRANTING OF CERTIORARI.

Supreme Court Rule 10.1 establishes the standards applicable to the Supreme Court granting certiorari. It states:

> Review on Writ of Certiorari is not a matter of right, but of judicial discretion. A Petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's

discretion, indicate the character of reasons the Court considers:

(a.) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; or has decided a federal question in a way in conflict with the State Court of last resort; or has so far departed from the accepted usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b.) a State Court of last resort has decided an important federal question in a way that conflicts with the decision of another State Court of last resort or of a United States Court of Appeals.

(c.) a State Court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Despite petitioner's voluminous citations to existing case law, he fails to advance a coherent argument that would justify the granting of certiorari. The decision of the Third Circuit is not in conflict with this Court or any other Circuit, nor did the Third Circuit decide an important question of federal law which necessitates the granting of certiorari. Rather, plaintiff seeks review of the Third

Circuit's affirmation of the District Court's granting of summary judgment to the defendants simply due to his inability to accept that decision which directly coincides with his inability to accept Carroll Christy's rebuffing of his obsessive and troubling advances. Plaintiff characterizes such advances as attempts at reconciliation inspired by true feelings of love when in fact they can more accurately be characterized as an obsessive following which instilled genuine feelings of fear in Carroll Christy and which the harassment and stalking statutes were designed, in part, to prevent. The course of conduct engaged in by petitioner established the requisite probable cause for petitioner's arrest as well as evidencing such irrationalities so as to buttress Carroll Christy's belief that her fears were and are reasonable.

Moreover, the standards employed by this Court in evaluating probable cause of law enforcement officers and qualified immunity of those officers are entirely in concert with the Third Circuit's reasoning. The District Court found that Officer Morales was prudent and reasonable in determining that plaintiff engaged in a course of conduct directed at Carroll Christy that would have caused a reasonable person in her position to fear bodily injury to herself or a member of her immediate family. Subsequently the Third Circuit affirmed the District Court's entry of summary judgment finding no tryable factual dispute as to whether Officer Morales had probable cause to arrest Sloan for stalking. Moreover, both the District Court and the Third Circuit found in favor of defendants on the alternative ground that Officer Morales is entitled to qualified immunity. Additionally, there were no material facts in dispute with reference to the events and circumstances leading to petitioner's arrest. Therefore, summary

judgment was properly granted to the defendant and that decision should remain undisturbed.

II. THE STANDARDS EMPLOYED BY THE SUPREME COURT AND THE THIRD CIRCUIT IN EVALUATING PROBABLE CAUSE ESTABLISH THAT DEFENDANT OFFICER MORALES POSSESSED PROBABLE CAUSE TO ARREST THE PLAINTIFF.

Plaintiff's Complaint alleged that he was either falsely arrested or maliciously prosecuted for the crime of stalking. There were no material facts in dispute with reference to the events and circumstances leading to plaintiff's arrest. Because these undisputed facts provided Officer Morales with probable cause to arrest plaintiff, he cannot be held civilly liable for effectuating this arrest. Summary judgment was properly granted to the defendants and that decision should remain undisturbed.

Plaintiff was charged with stalking in violation of N.J.S.A. 2C:12-10. New Jersey's anti-stalking statute was enacted effective January 5, 1993. It was subsequently amended by L. 1996, C. 39, effective June 20, 1996.[1] In pertinent part, the original version of the statute made it illegal to repeatedly engage in a "course of conduct" in order to alarm or annoy and to follow a person. N.J.S.A. 2C:12-10. The amended version of the statute removed the

[1] The stalking statute was additionally amended by L. 1998 C. 17, section 3, effective May 6, 1998 and L. 1999, C. 47, section 1, effective March 12, 1999. It is the original stalking statute and the statute as amended effective June 20, 1996 which are relevant to this litigation.

"following" requirement and further defined course of conduct as repeatedly "maintaining a visual or physical proximity to a person" or repeatedly conveying expressed or implicit threats. N.J.S.A. 2C:12-10 (as amended). The amended version of the statute also defined "repeatedly" as two or more occasions. *Ibid.*

The Fourth Amendment prohibits a police officer from arresting a citizen without probable cause. *See Orsatti v. New Jersey State Police*, 71 F.3d 480, 482 (3d Cir. 1995) (*citing Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). "Whether [an] arrest was constitutionally valid depends in turn upon whether, at the moment the arrest was made, the officer had probable cause to make it." *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964) (*citing Brinegar v. United States*, 338 U.S. 160, 175-176 (1949)).

The standards advanced by the Supreme Court and the Third Circuit in probable cause determinations are nearly identical. This Court has stated that probable cause to arrest exists if at the moment of the arrest "the facts and circumstances within [the officer's] knowledge and of which they had reasonable trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964) *citing Brinegar v. United States*, 338 U.S. 160, 175-176 (1949). According to the Third Circuit, probable cause to arrest exists when the information within the arresting officer's knowledge at the time of the arrest is sufficient to warrant a reasonable law enforcement officer to believe that an offense has been or is being committed by the person to be arrested. *See United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990). Under both standards probable cause existed to effectuate the arrest of Douglas Sloan.

Probable cause "is a fluid concept – turning on the assessment of probabilities in a particular factual context – not readily, or even usually, reduced to a neat set of legal rules." *Paff v. Kaltenbach*, 204 F.3d 425, 436 (3d Cir. 2000) (quoting from *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). While probable cause to arrest requires more than mere suspicion, the law recognizes that probable cause determinations have to be made "on the spot" under pressure and do "not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands." *Ibid.* (quoting from *Gerstein v. Pugh*, 420 U.S. 103, 121 (1975)). A "'common sense' approach [must be taken] to the issue of probable cause," and a determination as to its existence must be based on "the totality of the circumstances." *Ibid.* (quoting from *Sharrar v. Felsing*, 128 F.3d 810, 818 (3d Cir. 1997)).

It does not matter that plaintiff was eventually not convicted of the crime charged. The Supreme Court has determined that "[e]vidence that may prove insufficient to establish guilt at trial may still be sufficient to find the arrest occurred within the bounds of the law." *Barna v. City of Perth Amboy*, 42 F.3d 809 (3d Cir. 1994) (*citing Henry v. United States*, 361 U.S. 98, 102 (1959)).

The information within Officer Morales' knowledge at the time of Mr. Sloan's arrest was sufficient to warrant a reasonable or prudent law enforcement officer's belief that the offense of stalking either had been or was in the process of being committed by Mr. Sloan under either the Supreme Court's or the Third Circuit's standard and under either version of the New Jersey stalking statute. Mr. Sloan had engaged in an unwanted pursuit of Ms. Christy which caused her to fear that Mr. Sloan would kidnap or kill her. Mr. Sloan's conduct, and his pursuit, included

traveling hundreds of miles from Canada to Ms. Christy's hometown and later lurking in a state park in the vicinity of her place of employment. Mr. Sloan had both "followed" Ms. Christy and maintained a physical proximity to Ms. Christy on two or more occasions, and he was aware that Ms. Christy was afraid of him. The existence of probable cause is irrefutable.

III. OFFICER MORALES IS ENTITLED TO QUALIFIED IMMUNITY FROM CIVIL LIABILITY FOR HIS ARREST OF PLAINTIFF UNDER EITHER THE SUPREME COURT OR THE THIRD CIRCUIT'S STANDARD.

As set forth above, it is respectfully submitted that probable cause did exist to arrest plaintiff on July 3, 1996 for the crime of stalking. Therefore, as a matter of law, defendants' summary judgment motion was correctly granted and this decision should not be disturbed by granting petitioner's writ. The Third Circuit affirmed the District Court's holding that, in the alternative, Officer Morales was entitled to qualified immunity from liability because of his reasonable belief that probable cause did exist. This finding of qualified immunity is equally unassailable and should not be disturbed.

Law enforcement officials who "reasonably but mistakenly" conclude that their conduct comports with the requirements of the Fourth Amendment are entitled to immunity. *Sharrar v. Felsing*, 128 F.3d 810, 826 (3d Cir. 1997) (*citing Hunter v. Bryant*, 502 U.S. 224 (1991)). "The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct." *Saucier v. Katz*, 533 U.S. 194, 205 (2001). In this way, "the qualified immunity

standard 'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (quoting from *Hunter*, 502 U.S. at 229 (subquotations omitted)).

Qualified immunity shields officers "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Sharrar*, 128 F.3d at 826 (quoting from *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). In cases involving alleged violations of the Fourth Amendment, the Supreme Court has emphasized that the inquiry is whether a reasonable officer could have believed that his or her conduct was lawful, in light of the clearly established law, and the information in the officer's possession. *Id.* (citations omitted).

The objective reasonableness of the officer's actions is a question of law for the Court to decide. *Sharrar v. Felsing*, 128 F.3d at 826-28. Based upon the undisputed facts of this case, Officer Morales' actions were objectively reasonable. Morales' conclusion that probable cause existed to arrest Sloan under the superceded stalking statute was a reasonable conclusion given the facts and circumstances presented to him. Second, because Morales could have arrested Sloan for harassment pursuant to the provisions of New Jersey's Domestic Violence Act, plaintiff Sloan cannot maintain a claim based upon a purported false arrest on the charge of stalking.

As is acknowledged above, Officer Morales was unaware on July 3, 1996 that N.J.S.A. 2C:12-10b had been superceded as of June 20, 1996. Morales, in fact, based his assessment of probable cause on the superceded statute and arrested Sloan based upon his belief that Sloan's

actions violated the same. To the extent, therefore, that Morales believed that Sloan's conduct should have been viewed in the light of the superceded statute, he was in fact mistaken. However, this mistake and his conclusion that there was probable cause to arrest Sloan under the superceded statute were certainly reasonable. The statute itself had only been amended nine days prior to Morales' initial contact with Sloan. As Morales testified during his deposition, he initially reviewed the superceded statute with Sloan. The statute itself, 2C:12-10b, was within a bound paperback manual in Morales' possession. There was no testimony or evidence that the statute as amended had made its way into this manual.

While it is certainly reasonable to expect a police officer to be familiar with the provisions of the criminal code, it is not reasonable to expect a police officer to check on the status of pending or effective amendments to the code each time he opens Title 2C, the Code of Criminal Justice. Therefore, Morales' failure to know of the amendment to the anti-stalking statute was reasonable under the circumstances.

With regards to specific factors providing Morales with an objective reasonable belief that probable cause existed, the superceded statute provided for criminal liability for "purposely and repeatedly follow[ing] another person and engag[ing] in a course of conduct or mak[ing] a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily injury." N.J.S.A. 2C:12-10.

Reviewing Sloan's conduct in the light of the superceded statute, his trip to Millville, New Jersey and his relocation to a state park in the vicinity of Ms. Christy's

place of employment for the sole purpose of attempting to recapture her heart must be seen as the "follow[ing]" set forth in the statute. Additionally, Sloan's repeated phone calls to Ms. Christy's home, his unwanted letters to Ms. Christy's place of employment, his phone calls to Ms. Christy's place of employment and Sloan's contacts with Ms. Christy's family members must be seen as the "course of conduct" prohibited by the statute. Further, Sloan's statement to Ms. Christy that he was "taking back what he said about not holding a grudge," in the context in which it was made must be seen as a "credible threat" as defined by the statute.

Thus, considering Sloan's conduct under the terms of the superceded statute, there was certainly an objectively reasonable belief on the part of Officer Morales that probable cause existed to arrest Sloan.

Given the above, Morales' decision to charge Sloan with stalking was certainly objectively reasonable, and he should not be subject to civil liability for determining that probable cause existed to arrest Mr. Sloan for stalking.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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